

Illinois does have a pollution control facilities exemption. See 86 Ill. Adm. Code 130.335. (This is a GIL).

December 28, 1999

Dear Xxxxx:

This letter is in response to your letter dated December 6, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

This letter is being provided to satisfy your Department's requirement to supply a written request for documents. COMPANY is requesting a copy of Document 95-0168. Based on information provided by your information line, this document deals with the sales tax exempt status of equipment purchased for recycling. Please verify the appropriateness of the document prior to mailing to COMPANY.

Your prompt attention to this matter is appreciated. If you have any questions concerning this matter, do not hesitate to contact me immediately at ####.

The letter ruling you request regards the use of bobcat moving equipment to sort out materials. In order to obtain a copy of the ruling, you can either, access our Web site and obtain a copy for free, or send in \$1.50 to the above address and a copy will be forwarded to you.

There is no exemption under Illinois law specifically for the use of tangible personal property in recycling operations. Please be advised that Section 3 of the Illinois Use Tax Act (35 ILCS 105/3) imposes a tax upon the privilege of using tangible personal property in Illinois purchased at retail from retailers. Retailers incur Retailers' Occupation Tax liability upon their gross receipts from sales of tangible personal property for use in this State. The definition of use generally includes the purchase and utilization of assets and supplies used by persons engaged in recycling operations. Therefore, sales of items used in recycling operations are generally taxable, unless an exemption can be documented.

Illinois has no exemption specifically for machinery or equipment used in waste reduction activities. Illinois does have a pollution control facilities exemption, but its application is limited as described below. We have enclosed a copy of 86 Ill. Adm. Code 130.335 concerning Pollution Control Facilities.

The pollution control facilities exemption extends to "any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term "pollution" is defined in the Environmental Protection Act (415 ILCS 5/1 et seq.), or for the primary purpose of treating, pretreating,

modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property."

It has been the Department's long-standing position that recycling equipment confers an economic benefit to users and thus does not qualify for the pollution control exemption. The recycling process does not constitute elimination, prevention or reduction of pollution. If you would like a ruling on specific equipment please feel free to write us.

Under the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption is available for machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330, enclosed. The exemption also extends to repair and replacement parts as long as the parts are incorporated into machinery and equipment that is exempt under the regulation.

"Manufacturing" is defined as the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, which changes some existing material or materials into a material with a different use, form, or name. These changes must result from the process in question and be substantial and significant.

Generally, the use of machinery or equipment to effect a direct and immediate physical change upon the tangible personal property to be sold will be considered to constitute an exempt use under the manufacturing machinery and equipment exemption. Hand tools do not qualify for the exemption. However, pneumatic hand tools or electric powered hand tools used primarily in manufacturing or assembling may qualify for the exemption.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.